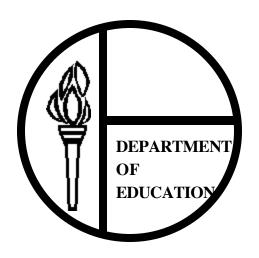
# EXTENDED SCHOOL YEAR AND SPECIAL EDUCATION

# Technical Assistance Document



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# **Nevada Department of Education**

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#### INTRODUCTION

What factors must be taken into consideration when deciding whether a student with a disability should receive services beyond what is available in the typical school year? What responsibility does a school district have to provide services to a student who will be turning three during the summer? Both parents and educators are asking these, and similar questions. Such questions deal with the concept known as extended school year (ESY) services.

While ESY services are defined in the regulations implementing the Individuals with Disabilities Education Act (IDEA), guidelines for decision-making regarding ESY services are not spelled out in detail. Most of the information about ESY has come about through non-regulatory guidance from the U.S. Department of Education and case law. As is true for other aspects of IDEA, ESY has continued to evolve. Thus, there is a need for a Technical Assistance (TA) document to provide current information necessary in addressing questions regarding ESY services. Answers to many commonly asked questions about ESY services are provided below. If, after reading this technical assistance document, you need more specific information regarding ESY services, please telephone the Nevada Department of Education at (775) 687-9171.

# Q. What are Extended School Year (ESY) services?

- **A.** IDEA regulations (34 CFR §300.309(b)(1-2)) define ESY services as "special education and related services" that meet the standards of the state education agency and are provided:
  - (1) beyond the normal school year.
  - (2) in accordance with an Individualized Educational Program (IEP), and
  - (3) at no cost to the parents of the child.

Given that each student's individual need for such services is an issue, a district may not establish categorical rules limiting eligibility to particular types of disabilities (34 CFR §300.309(a)(3)(i)). Further, a school district may not categorically limit the type, amount or duration of ESY services it will provide (34 CFR §300.309(a)(ii)).

ESY is often associated with school age children, K-12. However, ESY may also mean special education and related services designed to maintain a young (3-5 year old) child's acquired skills and to reduce regression during periods of time when early childhood special education is not in session (e.g., summer break).

ESY is often associated with summer break, but ESY services can be provided during any track break in the calendar year for those schools on a year-round or multi-track schedule. Thus, any eligible student with a disability, ages 3-21, who needs ESY services in order to receive a free and appropriate public education (FAPE), may receive such services.

#### Q. What is the difference between ESY services and summer school?

**A.** Summer school programs are optional and voluntary programs that provide enrichment, remedial, and reinforcement activities. Summer school is not required for the provision of FAPE. On the other hand, ESY services are those special education and related services that are determined by the student's IEP committee to be necessary to provide the student FAPE.

#### Q. When must the need for ESY services be determined?

A. The IEP committee should determine each year whether or not the student needs ESY services. This decision should be made before the end of the school year or before a significant break in the case of year-round (multi-track) schools. For students who are transitioning from Early Intervention services and who turn three during the summer, this means that special consideration is given to when the transition meeting is held. In such cases, the IEP committee must meet and determine before the break whether the pre-school student needs ESY services.

Decisions regarding ESY services should be made early enough in the school year to allow parents to use administrative remedies if they disagree with the decision of the IEP committee. If parents request but are refused ESY services, parents should be given prior written notice of the refusal within a reasonable amount of time prior to the break period (e.g., 30 days) to enable parents to respond to the district's decision to not provide ESY services. If a parent disagrees with the IEP committee decision to not provide ESY services and the district has not allowed sufficient time for the parent to use due process to formally disagree with that decision, then the district may wish to reconsider providing ESY services.

#### Q. Who makes the ESY services decision and how?

A. The IEP committee has the responsibility to determine whether a student needs ESY services. The amount of services to be provided must be stated in the IEP and any changes in the amount of services listed in the IEP cannot be made without holding another IEP meeting. (OSEP Letter to Libous, 17 IDELR 419)

#### Q. What are the parent's rights regarding ESY services?

**A.** Because ESY services are "special education and related services" necessary to provide FAPE, parents have the same rights to prior written notice of the district's proposals and refusals regarding ESY services as for any other services. These rights include provisions for dispute resolution, including due process, mediation, and complaint investigations.

# Q. Do ESY provisions apply to children who turn three during the summer?

A. A student eligible for special education and related services who turns three during the summer must be considered for ESY services in the same manner as any other eligible student. Cut-off dates are not permissible. Therefore, when a child turns three during the summer, the IEP developed by the third birthday must address the need for ESY services. The primary factors to consider regarding whether a child turning three during the summer is in need of ESY services are considered below as part of the larger discussion about students' needs for ESY. If ESY services are not needed to provide FAPE, the initiation of services could be the beginning of the upcoming school year. (OSEP Letter to Anonymous, 22 IDELR 980)

# Q. What factors help determine the need for ESY services?

**A.** The IEP committee is responsible for ensuring that a student receives FAPE, and must determine the special education and related services necessary to meet the student's unique needs. While there is not a standard checklist that an IEP committee can use to establish the need for ESY services, the following factors are among those to be considered. Thus, the IEP committee should consider the appropriateness of ESY services when:

- (1) acquisition and/or maintenance of a skill will significantly enhance a student's ability to function (critical skill),
- (2) a skill represents a barrier to continuous progress or self-sufficiency (critical skill),
- significant information exists that skill regression will necessitate an extended recoupment if ESY services are not provided (regression/recoupment),
- (4) the IEP committee believes that serious potential regression exists (regression/recoupment),
- (5) emerging skills/breakthrough opportunities are present
- (6) continuous treatment/instruction is an integral part of the teaching methodology deemed appropriate for the student (critical learning stage),
- (7) unusual, rare or other circumstances exist which are possible factors, and/or
- (8) interfering behaviors may significantly impede learning.

Other factors that may be considered include:

- (1) the degree of the impairment,
- (2) the degree of the regression,
- (3) the rate of recoupment,
- (4) the ability of the child's parent to provide the educational structure at home,
- (5) the rate of progress,
- (6) behavioral and physical needs,
- (7) the availability of alternative resources,
- (8) the ability of the child to interact with nondisabled children, and
- (9) areas of the child's curriculum which need continuous attention.

The factors above are not listed in order of importance. In most instances, the IEP committee will identify a combination of factors that create the need for ESY. School districts should consider establishing procedures to address the process of determining need for ESY services. See the Appendix A for an example of one mechansim for determing need.

(OSEP Letter to Anonymous, 22 IDELR 980, Alamo Heights v. Texas Bd. Of Ed., IDELR 557:315, Cordy v. Euckert, 17 IDELR 104, Lee v. Thompson, IDELR 554:429)

#### Q. What is "regression/recoupment"?

- A. Regression is described as the lack of maintenance of a skill, or loss of skills, over the summer recess or other breaks. Regression typically has to do with a student losing the use of a skill that had been acquired. So regression is a factor in considering ESY services when a break may result in the student relapsing or going backward significantly (regressing) either academically or behaviorally. Recoupment is the time necessary to get back the skill(s) lost. If an excessive amount of time is necessary in order for a student to reacquire the lost skill(s), then recoupment becomes a consideration for ESY services. The U.S. Office of Special Education Programs says that states can use "evidence of regression and slow recoupment without summer programming as a factor in determining the need for ESY services," but such evidence can not be required in order for a student to qualify for ESY services. Predictive data can also be used as evidence of potential regression and extended recoupment. (OSEP Letter to Anonymous, 22 IDELR 980, OSEP Letter to Myers, 16 EHLR 290)
- Q. How is recoupment/regression to be taken into account for a student who turns three during the summer when considering the need for ESY?

A. First, recoupment/regression is only one factor to be considered when determining the need for ESY services, regardless of the student's age. Given that the school will have little of its own data regarding regression for a student turning three, it is appropriate to seek relevant data and information from the early intervention personnel who have provided the early intervention services. Observational data regarding the child's behavior after breaks (e.g., January after the holidays) may also be used in such decisions. However, the IEP committee is not required to demonstrate previous student regression before ESY services are provided. If no empirical data are available, then the need for ESY may be shown by expert opinion or prospective criteria established by the IEP committee.

#### Q. What is a "critical skill"?

A. Critical skills represent knowledge or performance essential to the progress of the student. Critical skills are defined by the needs of the student, the IEP goals, and indicators of progress. They are different for every student. Each IEP committee should identify on an individual basis the critical skills of a student. For example, in one case it may be that the ability to sustain attention is a critical skill that may be lost over a summer. However, the identification of a critical skill does not, in and of itself, establish the need for ESY services.

# Q. What is a "critical learning stage"?

A. A critical learning stage is a point of development where a window of opportunity exists that will be lost if a service is not provided. One consideration is the student's readiness to generalize what has been learned so that it can be applied to other settings. During this stage the provision of ESY services will significantly enhance the student's ability to function independently. For example, if a student just began to develop toileting skills in May, the IEP committee should consider whether this new skill can be maintained, and generalized to other settings, without ESY services.

## Q. What are "emerging skills/breakthrough opportunities"?

**A.** Emerging skills/breakthrough opportunities refer to the point at which interruption in the instruction/services on the critical skill(s) caused by a school break is likely to prevent the student from receiving educational benefit from his/her educational program during the regular school year without ESY services.

#### Q. What are "interfering behaviors"?

A. Interfering behaviors are those behaviors targeted by the IEP goals and objectives (e.g., stereotypic, ritualistic, aggressive, or self-injurious behavior), such that interruption of programming for this behavior is likely to prevent the student from receiving educational benefit from his/her educational program during the regular school. As an example, for a student with severe behavior disorders receiving services in a highly structured environment, the IEP committee should consider whether the summer break would result in the loss of behavior control to the extent that the student would have to be placed in a more restrictive environment (i.e., residential placement) in the following school year. If so, ESY services may be necessary in order for the student to remain in the least restrictive environment.

#### Q. Must ESY services be provided to a student whose IEP goals are not met?

**A.** Failing to master IEP goals does not automatically make a student eligible for ESY services. Nothing in the federal or state regulations require students with disabilities who do not meet their IEP goals to receive ESY services. (*OSEP Letter to Kleczka*, 30 IDELR 270)

# Q. Are related services to be included as part of ESY services?

**A.** The need for related services during a school break may differ from the regular school year. The related services to be provided would depend on the special education services provided as part of ESY services. In the ESY context, however, some students may require related services as the sole component of their special education program during the summer. (*OSEP Letter to Libous*, 17 IDELR 419)

## Q. What continuum of placements is required for ESY services?

**A.** The availability of a full range of placement settings for ESY services is not required under the federal regulations. However, the district must maintain those placement options for ESY services that are necessary to implement a student's IEP. (*OSEP Letter to Myers*, 16 IDELR 290)

#### Q. May a district use private school placements for ESY services?

A. A district is not required to establish public programs for ESY services if the district does not offer any public programs for other students during the same time period. A district must purchase private placement for ESY services, however, if no public program is available and the student's IEP requires ESY services. (*OSEP Letter to Myers*, 16 IDELR 290)

## Q. Can Part B funds be used for private ESY placements by the school district?

**A.** If a private placement is appropriate, the district may use federal funds to pay for the ESY services in the private placement. (*OSEP Letter to Myers*, 16 IDELR 290)

- Q. Can Part B funds be used for private ESY placements for parentally placed private school students?
- **A.** Decisions regarding services to be provided to parentally placed private school students, including the types and amounts of such services and which students will be served, are made through a process of consultation between representatives of a public school and a representatives of students enrolled in a private school. Through consultation, if a determination is made that the public school will offer ESY services to a parentally placed private school student with a disability, Part B funds could be used for this purpose. In Nevada, students in a program of home instruction (home schooled) are entitled to the same determination regarding such services. (34 CFR Part 300, Attachment 1 Analysis of Comments and Changes, Subpart A)

# **APPENDIX A**

# Formula for Determining Need for ESY Services

| Scale for Assessing Need for ESY Services  Student's Name  Each criterion is based on the following three-point scale:  1 = Minimal difficulty, need, or anticipated problems  2 = Moderate difficulty, need, or anticipated problems  3 = Severe difficulty, need, or anticipated problems   |  |
|---|--|
| <b>Note:</b> If one of the objectives in the student's IEP includes the elimination of dangerous aggression towards self or others, the student will automatically receive a "3" on the regression.   |  |
| <ol> <li>The severity of the disabling condition</li> <li>The areas of learning crucial to attaining the goal of self-sufficiency</li> <li>The nature of the student's disability</li> <li>The extent of regression caused by interruption in educational programming</li> <li>The rate of recoupment following interruption in educational programming</li> <li>The ability of the student's parents to provide the educational structure at home</li> <li>The availability of alternative resources</li> <li>The ability of the student to interact with nondisabled peers</li> <li>The areas of the student's curriculum which need continuous attention</li> <li>The student's vocational needs</li> <li>Whether the requested service is extraordinary to the student's condition as opposed to an integral part of a program for those with the student's condition</li> </ol> TOTAL SCORE* |  |
| * The higher the total score, the greater the need for ESY services. The total score ranges from a low of 11 to a high of 33. A score of 22 (50 percent) or above generally indicates a need for ESY services.  |  |
| Adapted from a form appearing in <i>The Special Educator (1999)</i> , Vol. 14, Issue 22, p. 9. Form first developed by John Mattera & Joseph Cullen.  |  |

The courts, in Armstrong v. Kline (EHLR 551:195)(E.D. Pa. 1979) and Johnson v. Independent School District No. 4 (17 EHLR 170)(10th Cir. 1990) identified the range of factors eventually used to create the scale above. To obtain further information about the scale and how it was developed please consult the above referenced-article in *The Special Educator*.